signed by the hirer without the terms and particulars having been filled in at the time of its execution. Counsel for the parties submitted at great length on this point and their detailed submission is to be found in the record. Counsel for the defendant submitted that the hire purchase agreement was in fact a bill of sale within the meaning of the Bills of Sale Ordinance, 1950 and that by virtue of section 3 of that Ordinance it was void as having been unregistered. He also submitted that for the purposes of the hire purchase agreement the ingredients of offer and acceptance must be present but that in the present case there was no evidence of offer and acceptance. Counsel for the defendant also took the point that the agreement should be rejected as it was not properly stamped as required by the Stamp Ordinance.

Counsel for the plaintiffs referred to the case of *Gallie* v. *Lee & Anor.*[1] where it is laid down that "unless fraud or misrepresentation is pleaded and proved by the defendant, the defendant cannot come to court and say it was not an offer." In the present case neither fraud nor misrepresentation was pleaded or proved by the defendant and as such I agree with the submission of counsel for the plaintiffs. I also agree with the submission of counsel for the plaintiffs that the defendant, who is an educated person and a retired Government official of many years' standing, conversant with court procedure, knew what he was signing for and that he was fully aware of the particulars which would have been inserted in the spaces left blank at the time of signing. I cannot imagine that a person of the class of the defendant would have been irresponsible to the extent of signing a blank form without having known the terms and conditions of the agreement. He took away the car immediately after signing the blank form. There thus was offer and acceptance and it can be implied from this that he knew very well that what he was signing was a binding contract between him and the plaintiffs. I agree with the contention of counsel for the plaintiffs that there was very little difference between a bond and a contract, and that if a bond can be filled up after execution, so can a contract. Here it may be necessary to quote a passage from *Halsbury's* Laws of England, Third Edition, Volume 3, page 347, paragraph 660, Modes of Discharge, note (g):

"blanks may be filled up, even after execution, by consent of all the parties."

It might be necessary to state here that the defendant, far from pleading that the agreement was a bill of sale, went so far in his defence and counter-claim to refer to the agreement as being a hire purchase agreement. He admits this in paragraph 2, paragraph 3 and in almost every other paragraph of the statement the words "hire purchase agreement" are used. In paragraph 5 of the defence he even went further to state that "he would settle all arrears of instalments." Again in paragraph 6 he says "hire purchase instalments." What is worse, in paragraph 2 of the counter-claim he states that "the defendant is able and willing to pay the balance on the said agreement."

After having considered all the aspects of the matter including the pleadings, the evidence and the submission of counsel, I hold that Exhibit P1 is a hire purchase agreement and that as the defendant had fallen into arrears of the instalments due, the plaintiffs were quite rightly justified in terminating the agreement.

I find no merits in the defence contention that the agreement had not been properly stamped and I therefore over-rule the objection taken on this point.

As to the claim of $175.38 for insurance premium, it is clear that the defendant only used the car for fifteen days from the date of the renewal of the insurance policy. As such it will only be fair to make him pay the amount of premium in proportion to that. In view of this only a sum of $7.50 will be allowed in respect of insurance premium.

I agree that the taking of repossession of a motor car from a hirer is a somewhat unpleasant job and one which involves a certain amount of risk, but in the circumstances of the present case I do not consider that a charge of $120 for repossession is fair and reasonable. I therefore reduce this charge to $30.

In the event there will be judgment for the plaintiffs as follows: —

(a) $767.31 being arrears of hire rent.

(b) $7.50 being insurance premium for 15 days.

(c) $30 being seizing fee.

(d) Interest on the above sums at the rate of 12% per annum from 25th January, 1969 to date of payment.

(e) Costs to the plaintiffs on the magistrate's court scale.

The counter-claim of the defendant will be dismissed. I make no order as to the costs of the counter-claim.

Order accordingly.

Solicitors: *Allen Gledhill & Ball; D. A. Devadason.*

YEO SIOW YEE v. PUBLIC PROSECUTOR

[R.Cr.J. (Syed Othman J.) May 26, 1973]

[Kuantan — Criminal Revision No. 5 of 1972]

Criminal Law and Procedure — Money found on accused — Forfeiture — Disposal and compensation — Criminal Procedure Code (F.M.S. Cap. 6), ss. 406A, 407(ii), 412(i) and 426(i)(b) and Ch. XLI.

This was a petition by a prisoner for a revision *inter alia* of an order of forfeiture. The facts were that the petitioner had committed three offences of robbery of $5,000, attempted extortion and extortion of $100. On his plea of guilty to these offences he was convicted and sentenced to various terms of imprisonment. During the hearing of the robbery case, the prosecutor produced $8,190 found on the petitioner when he was arrested. The learned president ordered the money to be forfeited. While serving sentence the petitioner applied for this revision.

Held: (1) in this case justice was not served by the order forfeiting all the money to the government; the learned president should have considered first whether out of the amount recovered from the petitioner there was money regarding which the offence of robbery appeared to have been committed and then the manner of its disposal;

(2) the main power given to the court under section 407 of the Criminal Procedure Code is the power of disposal, and the power of forfeiture or confiscation is merely incidental;

(3) the learned president should have referred to section 412(i) which empowers the court to order property to be re-

stored to the possession of the person who had been dispossessed, and to section 426(i)(b) which empowers the court to order payment of compensation by a person convicted of a crime to the person injured by his property by the crime for which sentence was passed;

(4) in the circumstances of the case the order of forfeiture could not stand;

(5) out of the money recovered from the petitioner a sum of $5,600 should be paid to the victim in the robbery charge (the amount was calculated on $5,000 with interest at 6% p.a. for 2 years);

(6) as to the remainder $2,590, by operation of section 406A it should be handed over to the police officer in charge of the proceedings to deal with it in accordance with the provisions of Ch. XLI of the Code.

Case referred to:-

(1) *Lim Poon Pok* v. *Public Prosecutor* [1947] M.L.J. 172.

CRIMINAL REVISION.

Lee Beng Cheng for the petitioner.

Ahmad bin Abdul (Deputy Public Prosecutor) for the respondent.

Syed Othman J.: On 19th October, 1970 the petitioner committed robbery of $5,000. On 8th May, 1971 he committed attempted extortion and on 19th May, 1972 he extorted $100 from a doctor. All of the offences were committed in Temerloh. He was arrested on 9th September, 1972. On his plea of guilty to these offences and to an offence under the Arms Ordinance, he was convicted and sentenced to various terms of imprisonment. During the hearing of the robbery case, the prosecutor produced $8,190 found on the petitioner when he was arrested. The learned President, Sessions Court, Temerloh who heard the cases ordered the money to be forfeited. While serving sentence the petitioner applied for a revision of the sentences and order of forfeiture. I have dealt with the sentences. The forfeiture now remains to be considered.

It is not disputed that the court has the general power of forfeiture. The leading authority on this is *Lim Poon Pok* v. *Public Prosecutor*.[1] Willan C.J. delivering the judgment of the Court of Appeal in a criminal reference said at page 173: —

"In our view the amendment of this sub-section in the year 1932 makes it clear beyond doubt that this sub-section gives to any Criminal Court a general power of forfeiture in respect of any property or document produced before it regarding which any offence appears to have been committed or which has been used for the commission of any offence. This is clear from the words in the second paragraph of that sub-section:

The power herein conferred upon the court shall include the power to make an order for the forfeiture ... of such property.

'Such property' refers back to the property described in the first paragraph of that sub-section i.e. property regarding which any offence appears to have been committed or which has been used for the commission of any offence."

It should be observed that the main power that is given to the court under section 407(ii) of the Criminal Procedure Code (the Code) is the power of ordering for the custody or disposal. The general power of forfeiture is a mere attachment to this main power. Section 407(ii) reads: —

"During or at the conclusion of any inquiry or trial in any criminal court the court may make such order as it thinks fit for the custody or disposal of any property or document whatsoever produced before it or in its custody or the custody of the police or of any public servant regarding which any offence appears to have been used for the commission of any offence.

The power herein conferred upon the court shall include the power to make an order for the forfeiture or confiscation or for the destruction or for the delivery to any person of such property, but shall be exercised subject to any special provisions relating to forfeiture, confiscation, destruction or delivery contained in the written law under which the conviction was had."

It is now argued that, before the learned President could make the order, he should have given the petitioner an opportunity of being heard. I do not think this is at all necessary when the property is produced in the course of a trial. The trial itself gives an accused person the opportunity to explain not only about the offence with which he is charged, but also about property recovered by the police in the course of investigation or at the time of arrest and produced during the trial. In the case here the petitioner should have known that the money which the police recovered from him would be related to the offences with which he was charged and these offences involved money which he had forcibly and unlawfully taken away from other persons. It was a matter for him to be represented at the trial and to call such evidence as he wished not only about the offences but also about the money recovered from him at the time of arrest. The case record shows that before the sentences were passed and the order of forfeiture made, the petitioner did address the court. He said that he had a mother 70 years old and asked for another chance. He made no mention about the money which had been produced. His lack of interest in the money clearly indicates that it must have been the fruits of his crimes.

Counsel for the petitioner now informs me that the money was in fact from the proceeds of the business in buying and selling fish in the kampongs and should be returned to the petitioner. Before the learned President the petitioner did not say this. Even if he had said so, I am of the opinion that the court below would have, as I am now, only come to the conclusion that the petitioner must have started business with the proceeds of the robbery and the $5,000 of the total must have been property regarding which an offence appears to have been committed, notwithstanding the lapse of almost 2 years after the robbery. I doubt very much if the petitioner could have saved so much within so short a period in fish business in the kampongs. If he could have, there would have been little need for him to resort to a life of crime after the robbery in 1970. It is shown that in 1971 the petitioner attempted to extort $500 and in 1972, 3 months before the arrest, he extorted $100. Even if he could establish that all the money had been earned by honest means, there are other considerations before it could be returned to him.

The learned President, giving his reasons for having made the order of forfeiture, says in effect that a criminal should not be allowed to gain by his crime and that since he was informed that the petitioner was wanted on similar charges in Kuala Lumpur and other parts of the country (to quote him) "justice would be best served if the money be forfeited first and for all I know the money could be the subject matter of these charges".

With respect to the learned President, I do not think in the case here justice has been necessarily served by the order forfeiting all the money to the Government. He should have considered first whether out of the amount recovered from the petitioner there was money regarding which the offence of robbery appears to have been committed and then the manner as to its disposal. As observed earlier, the main power that is given to the court under section 407 of the Code is the power of disposal; and the power of forfeiture or confiscation is merely incidental. The learned President should also have referred to section 412(i) of the Code which empowers the court to order property to be restored to the possession of the person who has been dispossessed, and to section 426(i)(b) which empowers the court to order payment of compensation by a person convicted of a crime to the person injured of his property by the crime for which the sentence is passed. Then the learned President should have regard to the victim of the robbery who had been deprived of $5,000 for nearly 2 years. Considering these powers and the circumstances of the case, I do not think the order of forfeiture should stand. I would set it aside and order that out of the money recovered from the petitioner, a sum of $5,600 be paid to Ng Khay Niat, the person named as the victim in the robbery charge. The amount is calculated on $5,000 with interest at 6% per annum for 2 years.

As to the remainder, *i.e.* $2,590, it is shown in another case the petitioner extorted $100. It is not known whether the victim has recovered the money, and since it was indicated in the court below that there were other similar charges pending against the petitioner, the only way to deal with the remainder is to make no order. Then by operation of section 406A of the Criminal Procedure Code it should be handed over to the police officer in charge of the proceedings. It is a matter for the police to deal with it in accordance with the provisions of chapter XLI of the Code.

Order accordingly.

LIM THIAN HUAT v. FOZDAR

[A.Cr.J. (B.T.H. Lee J.) August 6, 1973]
[Kuching — Criminal Appeal No. K. 11 of 1972]

Criminal Law and Procedure — Complaint — Dismissal of complaint by Magistrate — Reasons to be recorded — Whether Magistrate can take into consideration report of previous police investigation — Sarawak Criminal Procedure Code (Cap. 58), ss. 119-121.

The appellant had made a report alleging the commission by Dr. Fozdar of the offence of intentionally using force. The police investigated the matter and recommended no further action. The State Advocate-General to whom the matter was referred by the appellant decided that no criminal prosecution should be instituted by the police. The appellant then made a complaint to a magistrate but he alleged that the magistrate did not reach any decision in the matter. Subsequently, the appellant obtained an order of mandamus for the complaint to be considered by the magistrate. The learned magistrate after considering the complaint and taking into consideration the report of the police investigations dismissed the complaint and stated his reasons for doing so. The appellant appealed against the order of the learned magistrate.

Held: (1) the learned magistrate in this case had considered all the materials which he had to consider and there was nothing improper in the order passed by him;

(2) there was nothing in law to prevent the magistrate from looking at the report of the police investigations which were completed before the complaint to him was made;

(3) as the learned magistrate had formed his own conclusions regarding the question of prima facie case after due consideration of the statement of the complainant and had given his reasons for dismissing the complaint, there were no grounds for interfering with his order.

Cases referred to:-

(1) *Virabhadrayya* v. *Vryicherla* 2 Weir 244.
(2) *Palai Lal* v. *Pasupati* 21 C.W.N. 127.
(3) *Ramanand* v. *Ali Hassan* 26 Cr. L.J. 129

CRIMINAL APPEAL.

T. O. Thomas for the appellant.
Steve Shim for the respondent.

B.T.H. Lee J.: This is an appeal from an order of the learned Magistrate, District Court, Kuching, made on 25th May, 1972 dismissing the complaint by the appellant.

The facts out of which this matter arose are briefly that on the 10th November, 1971, the appellant served a writ of summons on Dr. J. K. Fozdar at his clinic. It was alleged that the doctor had an argument with the appellant in the course of which force was used on the appellant and formed the subject of a complaint, an alleged offence under section 350 of the Penal Code.

The appellant's version as to what happened on that date in respect of which a report was lodged with the police was as follows: —

"On 10/11/71 at about 1025 hours I and Mr. John went to Poliklinik in Jawa Road to serve writ of summons and notice of motion in Civil Suit No. K. 242/71 (on the first defendant Dr. J. K. Fozdar). I am working with the T. O. Thomas and Co. He signed proof copy of notice of motion but he refused to return to me, and he also refused to sign and to accept the writ of summons. When I requested several times from him to return the proof copy of notice of motion, he raised up in anger and pushed me with his both hands at my left chest, and asked me to get out or else he would throw me out. Then I told him, he should not have used force, and he asked me to get out because that was his office. But I told him if he returned me the proof copy of notice of motion then I would leave, and he refused to do so. Then I told him, if he refused, I wouldn't leave. Then he rang up his lawyer Lim in my presence, and after his conversation with his lawyer, he returned to me the proof copy of motion. But he refused to sign the proof copy of motion. So, I left the service copy on his table, and I and John left his office.

(sgd. Lim Thian Huat)
10/11/71."

The police investigated the matter and recommended no further action.

The Sarawak State Attorney-General to whom the appellant referred his complaint replied that he saw no justification upon the facts for the institution of a criminal prosecution by the police. It was open to the appellant to institute a private prosecution against the person concerned if he was minded so to do.

It was alleged that the magistrate to whom the complaint was made did not reach any decision in the matter.

Application by appellant for leave for an order of mandamus was granted by the High Court on 27th April, 1972 and on 16th May, 1972 the High Court ordered the magistrate to consider and to decide within ten days the complaint made to him by Lim Thian Huat on affirmation on 7th December 1971.